

**MANDATORY CLAUSES
CONSTRUCTION SERVICES CONTRACTS**

The purpose of this Attachment is to provide additional requirements agreed to by the Parties to the Contract to which it is attached. The incorporation of the provisions set forth below into the Contract and the Governing Principles for application of such provisions are included below in Section 15.

1. DEFINITIONS

The following definitions will apply to this Attachment:

"AID" and "USAID" means the United States Agency for International Development.

"authorized geographic code" means the USAID Geographic Code 000 for the United States, as defined below.

"Contracting Agency" means Honduran Social Investment Fund (FHIS).

"Cooperating Country" means Honduras.

"Eligible Countries" means the countries designated in the provision entitled "Nationality, Source and Cargo Preference" from which goods and services may be obtained.

"Engineer" means the individual or firm designated by the Contracting Agency to oversee the Works.

"Geographic Code 935" means any area or country including the Cooperating Country, but excluding the foreign policy restricted countries which currently are Afghanistan, Libya, Vietnam, Cuba, Cambodia, Laos, Iraq, North Korea, Syria and the People's Republic of China.

"Government" means the Government of Honduras.

"Host Country" means Honduras.

"Program/Activity" means the overall undertaking of the Government and USAID of which the work under this Contract is only a part.

"United States" means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S.-associated sovereignty, including commonwealths, territories and possessions.

"Works" means, collectively, the permanent works to be executed under this Contract (including machinery, apparatus and the like intended to form a part of the permanent works) and the temporary works of every kind (other than the Contractor's equipment) required in or

about the execution and completion of the permanent works and the remedying of any defects therein.

2. LEGAL EFFECT OF USAID APPROVALS AND DECISIONS

The parties hereto understand that the Contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this Contract, the Contractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this Contract and the Program/Activity of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this Program/Activity and shall not be construed as making USAID a party to the Contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the Program/Activity with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Contracting Agency or USAID from asserting any right, or relieve the Contractor of any liability which the Contractor might otherwise have to the Contracting Agency or USAID.

3. NATIONALITY, SOURCE, AND CARGO PREFERENCE

- A. Unless otherwise specified in subsections D, E, F, or G below or in the provision entitled "Air Travel and Transportation," in order to be eligible for USAID financing all goods and services provided by the Contractor or any subcontractor under this Contract shall have their nationality, source, and origin in those countries listed in USAID Geographic Code 000 in effect on the date of acquisition, which currently consists of the United States, as defined above. However, the source rule does not apply to goods owned by the Contractor prior to bid opening. No equipment, materials or services shall be eligible for USAID financing if offered by a supplier or subcontractor included on any list of suspended, debarred, or ineligible bidders used by USAID.

Citizens of any country or area not included in USAID Geographic Code 935, and firms and organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in USAID Geographic Code 935 are ineligible for financing by USAID as suppliers of services or commodities or as agents in connection with the supply of services or commodities, except that individuals lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship. USAID may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Geographic Code 935 countries.

B. Definitions

(1) Source

The term "source" means the country from which a commodity is shipped to the Cooperating Country or the Cooperating Country if the commodity is located therein at the time of purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.

(2) Origin

The "origin" of a commodity is the country where a commodity is mined, grown, or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is significantly different in basic characteristics or in purpose or utility from its components.

(3) Componentry

A "component" is any good that goes directly into the production of a produced commodity. USAID componentry rules for commodities produced in Eligible Countries are as follows:

- a. Any component from a foreign policy restricted country makes the commodity ineligible for USAID financing.
- b. When the commodity being purchased is a kit (e.g., scientific instruments, tools, or medical supplies packaged as a single unit), the kit will be considered a produced commodity.
- c. When spare parts for vehicles or equipment are purchased, each separate shipment will be considered a produced commodity, rather than each individual spare or replacement part. The parts must be packed in and shipped from an Eligible Country.
- d. Systems determination. When a system consisting of more than one produced commodity is procured as a single, separately priced item, USAID may determine that the system itself shall be considered a produced commodity. When a determination is made to treat a system as a produced commodity, component commodities which originate from other than an authorized source country may be shipped directly to, and the system assembled in, the Cooperating Country, unless USAID specifically determines that assembly and shipment shall take place in an authorized source country. Transportation costs must still meet USAID requirements in order for them to be eligible for USAID financing. USAID shall inform the Contractor of any system determination.
- e. In order to be eligible for USAID financing, when items are considered produced commodities under paragraphs b, c or d of this subsection, the total cost (to the system supplier) of the commodities making up the kit, spare parts, or system

which were manufactured in countries not included in the authorized geographic code may not exceed 50 percent of the lowest price (not including ocean transportation and marine insurance) at which the supplier makes the final product available for export sale.

(4) Long-Term Lease

A "long-term lease" is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more than 180 days for the same type of commodity. Any commodity obtained under this Contract under a long-term lease agreement is subject to the source and origin requirements of this Section 3.

(5) Motor Vehicles

The term "motor vehicles" is defined as self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the highway trucks (such as off-road dump trucks) and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

C. Nationality

(1) Suppliers of Commodities

A supplier¹ providing commodities must fit one of the following categories for the transaction to be eligible for USAID financing:

- a. An individual who is a citizen or a lawfully admitted permanent resident of a country or area included in the authorized geographic code, except as provided in subsection A above;
- b. A corporation or partnership organized under the laws of a country or area included in the authorized geographic code and with a place of business in such country;
- c. A controlled foreign corporation; i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq. of the Internal Revenue Code, 26 U.S.C. 957, as attested by current information on file

¹ Source and nationality rules do not apply to suppliers of incidental services related to the procurement of equipment when these services are included as part of the procurement contract; however, citizens or firms of any country not included in USAID Geographic Code 935 are ineligible to supply incidental services except that individuals lawfully admitted for permanent residence in the United States are eligible regardless of their citizenship. Incidental services are defined as the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation, or use of such equipment.

with the Internal Revenue Service of the United States; or

- d. A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which are eligible under a, b or c of this subsection C(1).

(2) Suppliers of Services

a. Individuals and Privately Owned Commercial Firms

In order to be eligible for USAID financing as a supplier of services, whether as a contractor or subcontractor at any tier, an individual must meet the requirements of sub-section (i) below and a privately owned commercial firm must meet the requirements in subsection (ii) below and, in the case of the categories described in (ii) (a) and (ii) (b), the certification requirements in subsection (iii) must be met.

- (i) An individual must be a citizen of and have a principal place of business in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;
- (ii) A privately owned commercial (i.e., for profit) corporation or partnership must be incorporated or legally organized under the laws of a country or area included in the authorized geographic code, have its principal place of business in a country or area included in the authorized geographic code, and meet the criteria set forth in either subsection (a) or (b) below:
 - (a) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code or non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)
 - (b) The corporation or partnership:
 - I. has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals,
 - II. has performed within the United States administrative and

technical, professional or construction services similar in complexity, type and value to the services being contracted (under a contract or contracts for services) and derived revenue therefrom in each of the 3 years prior to the date described in the preceding subsection I;

III. employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States and more than half of its principal management positions, and

IV. has the existing technical and financial capability in the United States to perform the Contract.

(iii) The duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of subsections a(ii)(a) or a(ii)(b), or b. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subsection a(ii)(a), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

b. Nonprofit Organizations

(i) Nonprofit organizations, such as educational institutions, foundations, and associations, must meet the criteria listed in subsections (a), (b), and (c) below, and the certification requirement in a(iii) above to be eligible for financing by USAID as suppliers of services, whether as contractors or subcontractors at any tier. Any such institution must:

(a) Be organized under the laws of a country or area included in the authorized geographic code;

(b) Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

(c) Have its principal facilities and offices in a country or area included in the authorized geographic code.

(ii) International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Assistant Administrator, Global Bureau, are considered to be of U.S. nationality.

c. Foreign Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by non-U.S. governments or agencies thereof are not eligible for financing by USAID as contractors or subcontractors, except if their eligibility has been established by a waiver approved by USAID. This does not apply to Honduran government ministries or agencies.

d. Joint Ventures

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with subsections (2)a, b or c above.

e. Construction Services from Foreign-Owned Local Firms

- (i) When the estimated cost of a contract for construction services is \$5 million or less and only local firms will be solicited, a corporation or partnership which does not meet the test of subsection a(ii)(a) for eligibility based on ownership by citizens of the Cooperating Country (i.e. it is a foreign-owned local firm) will be eligible if it is determined by USAID to be an integral part of the local economy. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the Cooperating Country or, if there is such a company, that it is not interested in bidding for the proposed contract. In the latter case, inquiries on a company's interest should be addressed to its headquarters.
- (ii) A foreign-owned local firm is an integral part of the local economy provided:
 - (a) It has done business in the Cooperating Country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;
 - (b) It has a demonstrated capability to undertake the proposed activity;
 - (c) All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the Cooperating Country; and
 - (d) Most of its operating equipment and physical plant are in the Cooperating Country.

(3) Nationality of Employees under Contracts and Subcontracts for Services

a. General

The nationality rules set forth in subsections A and C(2) above do not apply to

the employees of contractors or subcontractors, but all contractor and subcontractor employees engaged in providing services under USAID-financed contracts must be citizens of countries included in USAID Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

b. Key Personnel (Applicable to Contracts with U.S. Firms only.)

When the Contractor on a USAID-financed construction contract is a United States firm, at least half of the supervisors and other key personnel specified in the Contract schedule working at the Program/Activity site(s) must be citizens or permanent legal residents of the United States. If more than one construction site is specified in the Contract, this requirement is individually applicable to each construction site in the Cooperating Country. Exceptions to this requirement may be authorized by USAID in writing if special circumstances exist which make compliance impractical.

D. Motor Vehicles

Motor vehicles must be manufactured in the United States to be eligible for USAID financing either as an acquisition or under a long-term lease agreement, i.e., the source may be any Eligible Country, but the origin must be the United States, and componentry must meet the criteria in subsection B(3) above. A vehicle which was assembled in the United States but then subjected to minor disassembly to reduce shipping costs is considered a U.S.-manufactured vehicle. However, so-called "knocked-down vehicles" consisting of parts or subassemblies of vehicles shipped from the United States for final assembly into completed vehicles elsewhere, are not considered vehicles. Such parts or subassemblies are subject to the source rules in subsection B(3) above.

E.² Source of Delivery Services

(1) With respect to ocean or air freight, "source" means the flag registry of the vessel or aircraft.

(2) Ocean Freight

- a. Except as provided in b below, all USAID-financed goods transported to the Host Country on ocean vessels for use in connection with this Contract shall be transported on privately owned United States flag commercial vessels to the extent they are available at fair and reasonable rates for U.S. flag commercial

² The Grantee is responsible for issuing instructions regarding which flag vessels may be used to transport goods under the contract in order to comply with USAID's cargo preference and eligibility rules. Contracts for some or all of the goods for the Program/Activity should specify shipment on U.S. flag vessels to assure compliance with the cargo preference requirements. When USAID finances transportation costs, contractors for the remainder of the goods for the Program/Activity should specify shipment on flag vessels which are eligible in accordance with the Nationality, Source and Cargo Preference clause.

vessels. If such flag vessels are not available, the Contractor may request a waiver from the Office of Procurement, Transportation Division, USAID, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20523-7900. The equipment and materials to which this requirement applies do not include (i) goods which were owned or leased by the Contractor prior to bid opening, (ii) any other goods the procurement of which was not directly or indirectly financed by USAID, or (iii) shelf items or consumables purchased in the Host Country. This requirement applies whether or not USAID finances transportation. If USAID finances the transportation costs, the rules on delivery services apply whether or not USAID is also financing the commodities being transported.

- b. USAID will finance costs incurred on vessels under flag registry of any Geographic Code 935 country if the costs are part of the total cost on a through bill of lading that is paid to a carrier for initial carriage on a vessel which is eligible in accordance with the preceding subsection a. provided that for shipments originating on a U.S. flag vessel with transshipment to a non-U.S. flag vessel, the Contractor must obtain a determination that direct service on a U.S. flag vessel is not available from USAID's Office of Procurement at the address provided in subsection c. below.
- c. Not later than 30 days from the date of shipment, the Contractor shall mail a legible copy of all rated Ocean Bill(s) of Lading to: (i) Maritime Administration, Division of National Cargo, 400 Seventh St., S.W., Washington, D.C. 20590-0001 and (ii) Office of Procurement, Transportation Division, USAID, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523-7900.

(3) Air Freight

The source requirements for air carriers are set forth in the clause of this Contract entitled "Air Travel and Transportation." When U.S. flag air carriers are not available, preference should be given to the use of Host Country or Code 941 flag air carriers before using Code 899 flag air carriers.

(4) Air and Ocean Charters

The Contractor shall not ship equipment, material, or other goods procured for the performance of this Contract on any ocean or air carrier which has been chartered for the carriage of such items until the Contractor has received written notice from the Contracting Agency that the charter has been approved by USAID.

(5) General Transportation

Unless otherwise authorized, USAID will not finance any transportation costs:

- a. For shipment beyond the point of entry in the Host Country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used and the point of destination is established in the carrier's tariff and stated in the "through bill of lading";

- b. On a transportation medium owned, operated, or under the control of any country not included within Code 935;
- c. On any vessel designated by USAID as ineligible to carry USAID-financed cargo; or
- d. Under any ocean or air charter covering full or part cargo which has not received prior approval by the Office of Procurement, Transportation Division, USAID/W.

F. Source of Marine Insurance

- (1) In the case of insurance, "source" means the country in which such insurance is "placed". Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country.
- (2) For purposes of this Contract, the source for marine insurance will be the United States (Geographic Code 000), except as USAID may otherwise agree in writing.

G. Local Procurement

- (1) Local procurement in the Cooperating Country involves the use of USAID-appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the Cooperating Country.
- (2) Unless a waiver is approved by USAID, local procurement is eligible for USAID financing only in the following situations:
 - a. Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of \$100,000 (exclusive of transportation costs).
 - b. Commodities of Geographic Code 935 origin if the value of the transaction does not exceed \$5,000.
 - c. Professional services contracts estimated not to exceed the local currency equivalent of \$250,000.
 - d. Construction services contracts, including construction materials required under the contract, estimated not to exceed the local currency equivalent of \$5,000,000.
 - e. Under a fixed-price construction contract of any value, the prime contractor may procure locally produced goods and services under subcontracts.
 - f. The following commodities and services which are only available locally:
 - (i) Utilities, including fuel for heating and cooking, waste disposal, and trash

collection;

- (ii) Communications -- telephone, telex, facsimile, postal and courier services;
- (iii) Rental costs for housing and office space;
- (iv) Petroleum, oils and lubricants for operating vehicles and equipment;
- (v) Newspapers, periodicals and books published in the Cooperating Country;
- (vi) Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the Cooperating Country, e.g., vehicle maintenance, hotel accommodations, etc.

4. HOST COUNTRY TAXES

- A. Pursuant to the bilateral agreement between the United States Government and the Host Country Government, the Contractor and those of its employees who are not citizens or permanent residents of the Host Country shall be free of all taxes, fees, levies, customs, or impositions imposed under laws in effect in the Host Country with respect to all work and services performed under this Contract. This exemption includes all customs, duties, and registration fees.
- B. With respect to shelf items, "identifiable" taxes, fees, customs, levies, or impositions of the Government or any subdivision thereof are those which are added to the price of goods or services and stated separately on invoices for same. These charges are subtracted from the price at the time of purchase. With respect to items imported for the Program/Activity, any such taxes, fees, customs, levies or impositions shall be paid by the Contracting Agency.
- C. The personal effects (including vehicles) of the Contractor and those of its employees who are not citizens or permanent residents of the Host Country shall be free of all taxes imposed under laws in effect in the Host Country with respect to such personal effects.
- D. The Government will allow the Contractor to import free of customs and duties such materials and equipment as may be required for the services under this Contract provided such items are either consumed in contract performance, reexported or transferred to the Government at the conclusion of the Contract.
- E. Any taxes, fees, levies, customs or imposition within the scope of paragraphs A through D above paid by the Contractor shall be reimbursed by the Contracting Agency.

5. WORKER'S COMPENSATION INSURANCE

- A. The Contractor shall provide and thereafter maintain Worker's Compensation Insurance assuring payment of benefits provided under the Defense Base Act (42 U.S.C. 1651)

with respect to and prior to the departure for overseas employment under this Contract of all employees who are hired in the United States or who are American citizens or bona fide residents of the United States.

- B. The Contractor agrees to procure the DBA insurance required by this clause from the DBA insurance carrier under contract with USAID unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA. Information on obtaining coverage under the USAID requirements contract and the list of countries for which USAID has secured waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, is shown in USAID Country Contracting Handbook, Chapter 2, Section 4.7.2.2.e. (ADS Section 305.6, Supplementary Reference).
- C. The Contractor agrees to provide employees who are not citizens of, residents of, or hired in the United States with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits, or in the absence of such law, employer's liability insurance.
- D. With respect to all employees who are hired for employment outside the country in which they are to be employed, this insurance coverage shall be provided prior to the departure for overseas employment under this Contract.
- E. The Contractor shall insert a clause similar to this clause, including this sentence, in all subcontracts except those exclusively for furnishing equipment and/or materials.

6. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor will not discriminate in recruitment or employment conditions of personnel hired in the United States because of race, religion, color, sex, or national origin and will maintain compliance with its equal employment opportunity obligations under Executive Order 11246 dated September 24, 1965.

7. DISPOSITION OF PERSONAL PROPERTY IN THE COOPERATING COUNTRY

- A. When a Contractor employee or a family member thereof who is present in the Cooperating Country as a dependent under the Contract disposes of personal property which has been imported or acquired under an exemption from Cooperating Country import restrictions, customs duties, or taxes by virtue of his/her status under this or a predecessor USAID-financed contract; such disposition shall be subject to rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government contractors in the Cooperating Country. This restriction applies under either grant- or loan-funded contracts, notwithstanding reference to only grant-funded contracts in 22 CFR Part 136. As used in this clause, the term "Contractor employee" includes any consultants, experts, or other personnel of the Contractor.
- B. The Contractor will (1) develop and apply appropriate disciplinary procedures for violations of the rules--procedures that are comparable to those applicable to U.S. Government employees at the same post; (2) notify those employees that are subject

to the rules of the content and implications of the rules and the disciplinary procedures, and (3) obtain (and retain in the Contractor's records) written acknowledgment of this notification from those employees.

- C. The Contractor agrees to incorporate the substance of this clause, including this subsection C, in all subcontracts under this Contract if performance in the Cooperating Country is required.

8. AIR TRAVEL AND TRANSPORTATION

- A. The Contractor shall utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available, in accordance with the following criteria:

- (1) If a U.S.-flag air carrier cannot provide the international air transportation needed, or if the use of a non-U.S. flag carrier is approved by USAID in order to accomplish USAID's mission, foreign-flag air carrier service may be deemed necessary. Travel or transportation on a non-free world air carrier is not reimbursable under this Contract.
- (2) Passenger or freight service by a U.S.-flag air carrier is considered available even though:
 - a. Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;
 - b. Foreign-flag air carrier service is preferred by, or is more convenient for, the Contractor or traveler; or
 - c. Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).
- (3) Except as provided in subsection (1) above, U.S.-flag air carrier service shall be used for commercial foreign air travel under this Contract if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:
 - a. U.S.-flag air carrier service available at point of origin shall be used to destination, or in the absence of direct or through service, to the farthest interchange point on a usually traveled route.
 - b. When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

- c. When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.
- (4) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if:
 - a. The gateway airport abroad is the traveler's origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or
 - b. The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.
- (5) For travel between two points outside the United States, the rules in subsections (1), (2), and (3) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be available if:
 - a. Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;
 - b. One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or
 - c. The travel is not part of the trip to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.
- (6) For all short-distance travel under either subsection (4) or subsection (5) above, U.S. air carrier service shall not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such travel time.
- B. Freight service by a U.S. flag carrier will be considered to be unavailable when the following criteria are met:
 - (1) When no U.S. flag air carrier provides scheduled air freight service from the

airport serving the shipment's point of origin and a non-U.S. flag air carrier does;

- (2) When the U.S. flag air carrier(s) serving the shipment's point of origin decline to issue a through air waybill for transportation at the shipment's final destination airport;
- (3) When use of a U.S. flag air carrier would result in delivery to final destination at least seven days later than delivery by means of a non-U.S. flag air carrier;
- (4) When the total weight of the consignment exceeds the maximum weight per shipment which the U.S. flag air carrier will accept and transport as a single shipment and a non-U.S. flag air carrier will accept and transport the entire consignment as a single shipment;
- (5) When the dimensions (length, width, or height) of one or more of the items of a consignment exceed the limitations of the U.S. flag aircraft's cargo door opening, but do not exceed the acceptable dimensions for shipment on an available non-U.S. flag scheduled air carrier.

- C. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, it will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIER

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S.-flag air carrier was unavailable for the following reasons:

[State reasons]

- D. If travel is by indirect route or the traveler otherwise fails to use available U.S.-flag air carrier service, and the certification required by subsection C above is not attached to the applicable voucher, USAID will not finance the amount determined under the following formula:

$$\frac{\text{Sum of U.S.-flag carrier segment mileage authorized}}{\text{Sum of all segment mileage authorized}} \times \text{Fare payable by Government (Contracting Agency)}$$

MINUS

$$\frac{\text{Sum of U.S.-flag carrier segment mileage traveled}}{\text{Sum of all segment mileage}} \times \text{Through fare paid}$$

traveled

E. The terms used in this clause have the following meanings:

- (1) "Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.
- (2) "Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.
- (3) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- (4) "U.S.-flag air carrier" means an air carrier holding a certificate under Section 401 of the U.S. Federal Aviation Act of 1958 (49 U.S.C. 1371).

F. The Contractor shall include the substance of this Section 8, including this subsection F, in each subcontract or purchase order hereunder which may involve international air transportation.

9. SETTLEMENT OF DISPUTES

A. Engineer's Decision

If a dispute of any kind whatsoever arises between the Contracting Agency and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Section 9. No later than the eighty-fourth day after the day on which he received such reference, the Engineer shall give notice of his decision to the Contracting Agency and the Contractor. Such decision shall state that it is made pursuant to this Section 9.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Contracting Agency shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Contracting Agency or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Contracting Agency or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of

84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to subsection D below of this Section 9, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Contracting Agency and the Contractor and no notification of intention to commence arbitration as to such dispute has been given by either the Contracting Agency or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Contracting Agency and the Contractor.

B. Amicable Settlement

Where notice of intention to commence arbitration as to a dispute has been given in accordance with subsection A of this Section 9, arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, whether or not any attempt at amicable settlement thereof has been made.

C. Arbitration

Any dispute in respect of which:

- (1) the decision, if any, of the Engineer has not become final and binding pursuant to subsection A of this Section 9, and
- (2) amicable settlement has not been reached within the period stated in subsection B of this Section 9 shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) by one or more arbitrators appointed under such Rules. The said arbitrator(s) shall have full power to open

up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to subsection A of this Section 9. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Contracting Agency, the Engineer and the Contractor shall not be altered by

reason of the arbitration being conducted during the progress of the Works.

D. Failure to Comply with Engineer's Decision

Where neither the Contracting Agency nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in subsection A of this Section 9 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with subsection C of this Section 9. The provisions of subsections A and B shall not apply to any such reference.

10. AUDIT AND RECORDS

Alternative I: If this Contract is with a non-U.S. Organization and it provides for expenditures in the amount of \$300,000 or more in any Fiscal Year of the Contractor under this Contract, the following Audit and Records provision applies:

A. The Contractor shall furnish the Contracting Agency and USAID accounting records and such other information and reports relating to the Contract as the Contracting Agency or USAID may reasonably request.

B. The Contractor shall maintain accounting books, records, documents and other evidence relating to this Contract, adequate to show, without limitation, all costs incurred by the Contractor under the Contract, the receipt and use of goods and services acquired under the Contract by the Contractor, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Contractor, the basis of award of Contractor subcontracts and orders, and the overall progress of the Contract toward completion ("Contract books and records"). The Contractor shall maintain Contract books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Contractor's option, with approval by the Contracting Agency and USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in Honduras. This clause does not apply to cost records for nonreimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to Contract books and records concerning the source, origin and nationality requirements for goods and services and other comparable contract requirements applicable to such items.

C. Contract books and records shall be maintained for at least three years after the date of final payment under this Contract or for such longer period, if any, required to resolve any litigation, claims or audit findings.

D. The Contractor shall submit to the Contracting Agency, in form and substance satisfactory to the Contracting Agency, a plan for the audit of the expenditures of "covered" subcontractors, as defined below.

(1) A "covered" subcontractor is one who expends \$300,000 or more in its fiscal year under its subcontract under this Contract.

(2) The plan shall describe the methodology to be used by the Contractor to satisfy its audit responsibilities for covered subcontractors. The Contractor may satisfy such audit responsibilities by relying on independent audits of the subcontractors; expanding the scope of the independent financial audit of the Contractor to encompass testing of subcontractors' accounts; or a combination of these procedures.

(3) The plan shall identify the funds, if any, made available to covered subcontractors that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Contractor's audit responsibilities.

(4) The Contractor shall ensure that covered subcontractors take appropriate and timely corrective actions; consider whether subcontractors' audits necessitate adjustment of its own records; and require each such subcontractor to permit independent auditors to have access to records and financial statements as necessary.

E. The Contractor shall furnish or cause to be furnished to the Contracting Agency and USAID an audit report for each audit arranged for by the Contractor in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

F. Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Contract.

G. USAID retains the right to perform the audits required under this Contract on behalf of the Contracting Agency or Contractor, conduct a financial review of the Contractor or any subcontractor, or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

H. The Contractor shall afford authorized representatives of the Contracting Agency and USAID the opportunity at all reasonable times to audit or inspect activities financed under this Contract, the utilization of goods and services financed under this Contract, and books, records and other documents relating to this Contract.

I. The Contractor will incorporate this provision into all subcontracts with non-U.S. organizations which meet the \$300,000 threshold of paragraph D of this provision. Subcontracts with non-U.S. organizations, which do not meet the \$300,000 threshold, shall, at a minimum, incorporate paragraphs A, B, C, G and H of this provision. Subcontracts with U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

Alternative II: If this Contract is with a non-U.S. Organization and it provides for expenditures in the amount of less than \$300,000 in each Fiscal Year of the Contractor under this Contract, the following Audit and Records provision applies:

A. The Contractor shall furnish the Contracting Agency and USAID accounting records and such other information and reports relating to the Contract as the Contracting Agency or USAID may reasonably request.

B. The Contractor shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred by the Contractor under the Contract, the receipt and use of goods and services acquired under the Contract by the Contractor, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Contractor, the basis of award of Contractor subcontracts and orders, and the overall progress of the Contract toward completion ("Contract books and records"). The Contractor shall maintain Contract books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Contractor's option, with approval by the Contracting Agency and USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in Honduras. This clause does not apply to cost records for nonreimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to Contract books and records concerning the source, origin and nationality requirements for goods and services and other comparable contract requirements applicable to such items.

C. Contract books and records shall be maintained for at least three years after the date of final payment under this Contract or for such longer period, if any, required to resolve any litigation, claims or audit finding.

D. USAID retains the right to perform the audits required under this Contract on behalf of the Contracting Agency or Contractor, conduct a financial review of the Contractor or subcontractor, or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

E. The Contractor shall afford authorized representatives of the Contracting Agency and USAID the opportunity at all reasonable times to audit or inspect activities financed under this Contract, the utilization of goods and services financed under this Contract, and books, records and other documents relating to this Contract.

F. The Contractor will include this provision in all subcontracts with non-U.S. organizations and will include in all subcontracts with U.S. organizations a provision containing the substance of Alternative III below.

Alternative III: If this Contract is with a U.S. organization, the following Audit and Records provision applies:

A. The Contractor is subject to the audit requirements contained in OMB Circular A-133.

B. The Contractor will include this provision in all subcontracts with U.S. organizations and will include in all subcontracts with non-U.S. organizations a provision containing the substance of Alternative I or Alternative II above, as the case may be.

11. ANTI-CORRUPTION PROVISIONS

No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this Contract. Any such practice will be grounds for cancelling the award of this Contract and for such other additional actions, civil and/or criminal, as may be applicable.

12. MARKING

The Contractor shall ensure that Program/Activity construction sites and other Program/Activity locations are identified with display signs, suitably marked with the USAID handclasp symbol, indicating participation by the United States in the Program/Activity. Temporary signs must be erected at the beginning of construction and be replaced by permanent signs, plates or plaques, suitably marked with the USAID handclasp symbol, upon completion of construction. The USAID Mission in the Host Country or the Office of Procurement in USAID/Washington will provide information on marking requirements for the Program/Activity.

13. PAYMENT

Alternative I: If this Contract is with a non-United States organization, the following subsection A shall apply to this Contract:

A. General

- (1) Payments under the Contract shall be made in lempiras financed with funds made available by USAID. Such payments will be made to the Contractor directly by the Contracting Agency or, on behalf of the Contracting Agency, by a financial administrative services firm identified in the Contract.
- (2) Payments will be made in the amount shown in the Contractor's statement as certified by the Engineer, bearing the approval of the Contracting Agency and accompanied by appropriate original documentation as set forth in subsection E below.

Alternative II: If the Contract is with a United States organization, the following subsection A shall apply to this Contract:

A. General

- (1) Payments under this Contract shall be made in U.S. Dollars financed with funds made available by USAID. Such payments will be made to the Contractor directly by USAID through a USAID direct Letter of Commitment.
- (2) Within 15 days of execution of the Contract, the Contracting Agency shall request USAID to execute a direct Letter of Commitment acceptable to the Contractor in an amount equal to the total Contract amount. USAID shall endeavor to issue the Letter of Commitment within 15 days after receipt of the

Contracting Agency's request.

- (3) Payment will be made by USAID, on behalf of the Contracting Agency, in accordance with the Contractor's statement as certified by the Engineer; approved by the Contracting Agency and accompanied by appropriate original documentation as set forth in subsection E below, following receipt, review and approval by USAID of the documentation.
- (4) In the event that in performance of its obligations under this Contract, the Contractor converts foreign currency into local currency in the Cooperating Country, such conversion shall be made at an exchange rate which is not unlawful in the Cooperating Country.

The following subsections B through H apply to this Contract regardless of the nationality of the Contractor.

B. Payment Schedule

Within 30 days after the signing of the Contract, the Contractor shall submit a proposed mobilization cost and payment schedule indicating the estimated payments throughout the life of the Contract. This schedule shall be in a form satisfactory to the Engineer, shall be consistent with the general construction schedule, and shall be in sufficient detail to permit the Engineer to prepare cash flow projections for the Contracting Agency and USAID.

C. Mobilization Payment

- (1) After signing the Contract, the Contractor may, at its option, receive a mobilization payment in an amount not to exceed 12 percent of the value of the Works. The mobilization payment will be exempt from the retention requirement set forth in subsection F below.
- (2) As provided in the Invitation for Bids (IFB), the Contractor is permitted to receive a mobilization payment, up to the maximum amount specified above and in accordance with the approved mobilization cost and payment schedule submitted to the Engineer, after expenditures are incurred, for purchase of equipment and materials and for other costs required to assemble personnel, equipment and construction plant necessary for prompt commencement of the Works. The mobilization payment may include costs such as: transportation of equipment, materials, construction plant and expatriate personnel; purchase of performance securities and insurance; preparation of yard and office facilities; purchase of specialized materials, equipment and construction plant; and final mobilization of individual working sites.
- (3) Before receiving the mobilization payment, the Contractor must present the following:
 - a. Contract Completion Bond equivalent to 15% of the value of the Works.
 - b. Bank guaranty equivalent to 100 percent of the value of the mobilization payment

D. Progress Payments

(1) At regular intervals mutually agreed upon by the Contractor and the Contracting Agency (but not more often than monthly), the Contractor shall submit to the Engineer for review an interim statement in a form acceptable to the Contracting Agency, filled out and signed by the Contractor, covering the cumulative amount and value of work carried out as of the date of the statement and accompanied by such data, schedules, receipted bills, and affidavits as the Engineer may reasonably require as well as appropriate documentation as set forth in subsection E. The statement shall be computed on the bases of the lump sums and unit prices of the Contract.

(2) The Engineer shall within 15 working days after receipt of each interim statement, either indicate in writing its certification of payment due and present the statement to the Contracting Agency or return the statement to the Contractor indicating in writing its reasons for refusing such certification of payment. In the latter case, the Contractor shall make the necessary corrections and resubmit the statement.

(3) The Engineer's certification on any payment requested in an interim statement will constitute a representation by it to the Contracting Agency, based on the Engineer's on site observations of the work in progress and on its review of the interim statement and the accompanying data that the work has progressed to the point indicated and that, to the best of its knowledge, information and belief, the quality of the work is in accordance with the Contract. The Engineer may refuse to certify the whole or any part of any payment if, in its opinion, it would be incorrect to make such representations to the Contracting Agency.

(4) Within 20 working days of receipt of the Engineer's certification of the interim statement, the Contracting Agency shall act upon said statement by (a) approving payment, (b) informing the Contractor of any objections to the statement, or (c) informing the Contractor of its intent to withhold all or part of the progress payment and the contractual justification for withholding payment.

(5) Within 30 days of the Engineer's certification of the interim statement (unless the Contracting Agency notifies the Contractor of an objection to the statement or payment is withheld as provided above), the Contractor shall be paid the amount due, minus the retention amount stated in subsection F below.

(6) No progress payment shall be construed as an acceptance of the Works or of any portion of the Works, nor shall the making of such payment preclude the Contracting Agency from demanding and recovering from the Contractor such damages as the Contracting Agency may sustain by reason of the Contractor's failure to comply with the requirements of the Contract.

(7) This is an entire Contract for the whole and complete Works and any partial payment affected or made pursuant to the Contract shall not relieve the Contractor of any of his obligations under the Contract.

E. Documentation for Payment

Each interim statement and the final statement must be accompanied by the following documentation:

(1) The Contractor's invoice (one copy) describing the services performed and identifying the section in the Contract which contains the terms of payment.

(2) The "Contractor's Certificate and Agreement with the Agency for International Development, Contractor's Invoice and Contract Abstract" (Form USAID 1440-3), executed in accordance with the instructions therein.

(3) For U.S. organizations may, the "Public Voucher for Purchase other than Personal" (USAID SF 1034), an original and three copies.

(4) A certificate, signed and dated by the Contracting Agency or Engineer (if formally authorized), as follows:

a. For progress payments: "The Contracting Agency certifies that (i) the services (or equipment and materials) for which payment is requested have been satisfactorily performed (delivered) and (ii) the payment requested is in accordance with the terms of the contract."

b. For final payment: "The Contracting Agency certifies that the services (or equipment and materials) for which final payment is invoiced meet in all respects the specification prescribed in the covering contract, and the amount invoiced is properly due and payable under the terms of the contract."

(5) For the final payment, a "job quality bond" which provides for a guaranty of the quality of the Works completed by the Contractor under this Contract for a period of not less than one year from the date of final acceptance of such Works by the Contracting Agency. The job quality bond will be equivalent to 5% of the value of the Works.

(6) If the Contract has been terminated pursuant to the provisions herein, the claim for termination costs shall be accompanied by:

- a. Written justification by the Contractor supporting in detail the claimed charge.
- b. Either written concurrence by the Contracting Agency to the Contractor's claim or a certified copy of an arbitration award.

F. Retentions

The Contracting Agency and USAID, on behalf of the Contracting Agency, shall deduct and retain an amount equal to 5 percent of the total amount certified by the Engineer on each interim statement. The retained amounts shall be paid upon final acceptance of the work.

G. Final Payments

Final payments of all amounts due the Contractor (including retentions) will be made upon submission of the documentation required by subsection E above and after the Certificate of Completion has been issued by the Engineer.

H. Monies or Credit Due the Contracting Agency

Whenever throughout the life of the Contract and before the final payment, certain monies become due by the Contractor to the Contracting Agency, the Contracting Agency shall have right to recover such costs by either of the following methods or combination thereof:

- (1) Deduction from monies due the Contractor, or to later become due the Contractor or being retained by the Contracting Agency or USAID, on behalf of the Contracting Agency, pending final acceptance of the work, or
- (2) Recovery from the Contractor's surety.

14. ASSIGNMENT, SUBCONTRACT CLAUSES AND PROCUREMENTS.

- A. USAID's prior written consent to any assignment of obligations under the Contract, in addition to the consent of the Contracting Agency, is required.

- B. The Contractor agrees to include the following provisions of this Attachment in all subcontracts hereunder in accordance with the terms of such provisions:

"Air Travel and Transportation";

"Audit and Records";

"Disposition of Personal Property in the Cooperating Country";

"Nationality, Source and Cargo Preference", and

"Worker's Compensation Insurance".

- C. If the Contractor will procure equipment and materials on a cost reimbursable basis, it shall conduct such procurements in accordance with USAID's Country Contracting Handbook, Chapter 3, "Procurement of Equipment and Materials" and an additional attachment related to such procurements will be attached to and form part of this Contract.

15. INCORPORATION OF ATTACHMENT INTO THE CONTRACT AND GOVERNING PRINCIPLES

- A. This Attachment is incorporated into and forms a part of the Contract to which it is attached. Accordingly, for matters which are addressed in both the text of such Contract and this Attachment, the provisions of this Attachment will constitute additional requirements for the Contract and, in the event of ambiguity or conflict between any provision in the text of the Contract and any provision(s) set forth in this Attachment,

the provision(s) in this Attachment will control.

- B. This Attachment is prepared in both English and Spanish. In the event of ambiguity or conflict between the two versions, the English language version of this Attachment will control.